



COLVIN & SON, LLC  
STONE CABIN RANCH, LLC

189 IBLA 179

Decided January 4, 2017



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
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COLVIN & SON, LLC  
STONE CABIN RANCH, LLC

IBLA 2017-2

Decided January 4, 2017

Appeal from and a petition for a partial stay of the Bureau of Land Management's September 2016 Stone Cabin Herd Management Area Wild Horse Gather Plan. DOI-BLM-NV-B020-2011-0106-EA.

Motion to dismiss granted; petition for a partial stay denied as moot; appeal dismissed.

1. Administrative Procedure: Decisions;  
Appeals: Jurisdiction

Departmental regulations define this Board's jurisdiction and specify that the Board has authority to review certain "decisions rendered by Departmental officials." The existence of a "decision" is key. A "decision" authorizes or prohibits some action that affects a person having or seeking some right, title, or interest in public lands or their resources. In the absence of an agency decision, this Board does not have jurisdiction to review the challenged agency action.

2. Administrative Procedure: Decisions;  
Appeals: Jurisdiction

Documentation of the continuing implementation of an earlier decision is not a "decision" subject to the Board's review authority.

APPEARANCES: W. Alan Schroeder, Esq. and Brian G. Sheldon, Esq., Boise, Idaho, for appellants; Nancy S. Zahedi, Esq., Pacific Southwest Region, Office of the Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE RIECHEL

Appellants Colvin & Son, LLC and Stone Cabin Ranch, LLC appeal, and seek to partially stay, the Bureau of Land Management (BLM), Battle Mountain District, Tonopah Field Office's Stone Cabin Herd Management Area (HMA) Wild Horse Gather Plan (Gather Plan). In the Gather Plan, BLM explained that it would conduct a wild horse gather to remove excess wild horses and apply a fertility control vaccine to mares in the Stone Cabin HMA beginning on or about September 1, 2016. Appellants challenge the plan and allege it is inconsistent with BLM's previous 2011 Stone Cabin Complex Decision.

The Board has authority to review certain "decisions rendered by Departmental officials." A "decision" authorizes or prohibits some action that affects a person having or seeking some right, title, or interest in public lands or their resources. Without a decision, the Board does not have jurisdiction and must dismiss the appeal. Here, Appellants appeal a 2016 Gather Plan that is not a decision but instead documents the continuing implementation of BLM's 2011 Stone Cabin Complex Decision to achieve and maintain the appropriate management level (AML) of wild horses over ten years. Because the Gather Plan is not a decision, we do not have jurisdiction to review it, and we deny Appellants' partial stay petition as moot and dismiss Appellants' appeal.

## BACKGROUND

1. *The 2011 Stone Cabin Complex Decision and 2016 Gather Plan*

In December 2011, BLM issued a decision to implement a wild horse gather plan for the Stone Cabin Complex over 10 years.<sup>1</sup> The Stone Cabin Complex includes the Stone Cabin HMA in Nye County, Nevada, which has an AML of 364 wild horses.<sup>2</sup> The 2011 Stone Cabin Complex Decision provided for an initial gather and removal of up to 550 excess wild horses and application of Porcine Zona Pellucida (PZP) fertility control vaccine<sup>3</sup> to mares and set a goal of achieving a post-gather population of 247-274 wild horses in the Complex.<sup>4</sup> The 2011 Stone Cabin Complex Decision

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<sup>1</sup> Decision: Stone Cabin Complex, Wild Horse Gather Plan and Environmental Assessment, DOI-BLM-NV-B020-2011-0106-EA (2011 Stone Cabin Complex Decision) (Dec. 22, 2011).

<sup>2</sup> *Id.* at 1, 2.

<sup>3</sup> Stone Cabin Complex Wild Horse Gather Plan and Final Environmental Assessment DOI-BLM-NV-B020-2011-0106-EA (EA) at 10 (Dec. 2011).

<sup>4</sup> 2011 Stone Cabin Complex Decision at 2.

authorized subsequent gathers, too, by providing for “[c]ontinuing population growth control protocols over the next 10 years by returning to the Stone Cabin Complex every 2-3 years to treat and/or re-treat mares with fertility control and to maintain AML using limited removals.”<sup>5</sup>

BLM completed the initial gather under the 2011 Stone Cabin Complex Decision in February 2012.<sup>6</sup> During the initial gather, BLM gathered 726 wild horses and returned 210 of them to the range after the mares were treated with PZP.<sup>7</sup> But due to limited budgetary resources, extreme and severe drought conditions in parts of Nevada that resulted in emergency wild horse gathers, and competing national priorities for available funding, BLM was not able to continue implementing the 2011 Stone Cabin Complex Decision until 2016.<sup>8</sup> BLM plans to return again in 2017 and subsequent years if funding is available and national priorities allow, so that BLM may achieve and maintain AML.<sup>9</sup>

With funding for a gather in 2016, BLM planned to gather 325 wild horses, permanently remove 115 of them, treat all mares to be released back into the Stone Cabin HMA with fertility control, and leave a post-gather population of 458 wild horses in the Stone Cabin HMA.<sup>10</sup> BLM notified grazing permittees with allotments in the HMA about the upcoming wild horse gather operations and invited them to a pre-gather meeting about trapping locations.<sup>11</sup> One permittee asked for the “gather plan” for the 2016 operations.<sup>12</sup> The BLM Wild Horse and Burro Specialist explained that there was no gather plan, only an “internal communications plan,” and offered to provide it after removing Privacy Act information (e.g., emergency contact

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<sup>5</sup> *Id.*; EA at 14, 18.

<sup>6</sup> BLM Motion to Dismiss for Lack of Jurisdiction; Motion to Dismiss as Moot; Response to Petition for Partial Stay; Response to Statement of Reasons (BLM Motion to Dismiss) at 3-4 (Oct. 27, 2016) (citing the 2012 Stone Cabin Gather Reports, available at [https://www.blm.gov/nv/st/en/fo/battle\\_mountain\\_field/blm\\_programs/wild\\_horse\\_and\\_burro/Stone\\_Cabin\\_Complex/gatreports.html](https://www.blm.gov/nv/st/en/fo/battle_mountain_field/blm_programs/wild_horse_and_burro/Stone_Cabin_Complex/gatreports.html) (last visited Jan. 4, 2017)).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> Internal BLM Communications and Incident Action Plan, Stone Cabin HMA Wild Horse Gather, Sept. 2016, at 2.

<sup>11</sup> BLM Motion to Dismiss at 4; *see, e.g.*, e-mails from Elizabeth Freniere, BLM Wild Horse & Burro Specialist (BLM Specialist), to Roy Clifford (Stone Cabin Ranch LLC) and Heath Miller (Colvin & Son LLC), dated Aug. 30, 2016.

<sup>12</sup> BLM Motion to Dismiss at 4; text messages between BLM Specialist and Colvin & Son LLC, dated Sept. 2, 2016.

information for BLM employees).<sup>13</sup> BLM then prepared a “public” version of its internal communications plan, labeled it “BLM Wild Horse Gather Plan (Public), Stone Cabin HMA Wild Horse Gather,” and sent it to the permittees.<sup>14</sup>

From September 4 to October 4, 2016, BLM gathered 292 wild horses, treated 82 mares with PZP, permanently removed 121 wild horses, and released 171 wild horses back to the Stone Cabin HMA.<sup>15</sup>

## *2. Appellants’ Appeal of the 2016 Gather Plan and BLM’s Motion to Dismiss*

Appellants are grazing permittees who graze cattle on allotments that include portions of the Stone Cabin HMA.<sup>16</sup> They provided comments on the preliminary EA for the 2011 decision<sup>17</sup> but did not appeal the 2011 Stone Cabin Complex Decision because, Appellants explain, they were not adversely affected by it.<sup>18</sup> Appellants state that they are appealing now because the 2016 gather will not result in reducing the wild horse population below the AML of 364 horses in the Stone Cabin HMA, as prescribed by the 2011 Decision, and therefore will adversely affect their grazing operations by reducing the amount of forage available for their livestock and habitat for wildlife.<sup>19</sup> Appellants claim that BLM violated the Wild Free-Roaming Horses and Burros Act and implementing regulations<sup>20</sup> by issuing the 2016 Gather Plan because it does not comply with the 2011 Stone Cabin Complex Decision’s direction “to maintain AML” within the Stone Cabin HMA.<sup>21</sup> Appellants also claim that BLM

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<sup>13</sup> BLM Motion to Dismiss at 4-5; text messages between BLM Specialist and Colvin & Son LLC, dated Sept. 2, 2016.

<sup>14</sup> See BLM Motion to Dismiss at 5; e-mail from BLM Specialist to Shawna Richardson and David Hullum (BLM Battle Mountain District staff), dated Sept. 2, 2016; text messages between BLM Specialist and Colvin & Son LLC, dated Sept. 2, 2016; e-mails from BLM Specialist to Stone Cabin Ranch LLC and Colvin & Son LLC, dated Sept. 2, 2016.

<sup>15</sup> BLM Motion to Dismiss at 5-6; Final Gather Data Report.

<sup>16</sup> Notice of Partial Appeal, Statement of Standing, Statement of Reasons, and Petition for Partial Stay of the 2016 Gather Plan (NOA) 7, 9-10 (Oct. 3, 2016).

<sup>17</sup> See NOA at 8, 10; *see also, e.g.*, EA, Appendix I, at 119-20, 121 (comments on behalf of Appellants).

<sup>18</sup> NOA at 9 n.6, 11 n.7, 16; Appellants’ Reply and Response to BLM’s Filing Dated Oct. 24, 2016 (Appellants’ Reply to BLM’s Motion to Dismiss) at 4.

<sup>19</sup> NOA at 9, 11.

<sup>20</sup> 16 U.S.C. §§ 1331-1340 (2012); 43 C.F.R. Part 4700.

<sup>21</sup> NOA at 18-21.

violated the National Environmental Policy Act (NEPA) and implementing regulations<sup>22</sup> by issuing the 2016 Gather Plan without any new or supplemental NEPA analysis to account for the deviation from the 2011 Decision.<sup>23</sup>

In response to Appellants' appeal, BLM filed motions to dismiss on two grounds, one of which was jurisdictional.<sup>24</sup> Specifically, BLM argued that the "2016 BLM Wild Horse Gather Plan (Public), Stone Cabin HMA Wild Horse Gather" is not a decision subject to appeal under Departmental regulations.<sup>25</sup> Instead, the gather described in the 2016 Gather Plan was a continuation of the implementation of the 2011 Stone Cabin Complex Decision.<sup>26</sup> Because BLM challenged the Board's jurisdiction over Appellants' appeal, we held Appellants' petition for a partial stay in abeyance until the pending jurisdictional matters could be fully briefed. BLM's Motion to Dismiss is now ripe for disposition.

## DISCUSSION

We will first explain why the 2016 Gather Plan is not itself an appealable decision. We will then explain why the 2016 Gather Plan is not a new decision, distinct from the 2011 Stone Cabin Complex Decision.

### 1. *The 2016 Gather Plan Is Not an Appealable Decision*

[1] Departmental regulations define this Board's jurisdiction. They specify that we have authority to review certain "decisions rendered by Departmental officials."<sup>27</sup> The existence of a "decision" is key.<sup>28</sup> Through our case law, we have defined what constitutes a "decision" that triggers our review authority.<sup>29</sup>

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<sup>22</sup> 42 U.S.C. §§ 4321-4370h (2012); 40 C.F.R. Parts 1500-1508; 43 C.F.R. Part 46.

<sup>23</sup> NOA at 21-30.

<sup>24</sup> BLM Motion to Dismiss at 6-12.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.* at 4, 7-8, 10.

<sup>27</sup> 43 C.F.R. § 4.1(b)(2); *see also id.* § 4.410(a) ("Any party to a case who is adversely affected by a decision of the Bureau . . . has the right to appeal to the Board.").

<sup>28</sup> *GEO-Energy Partners-1983 LTD.*, 170 IBLA 99, 119 (2006) (citing *Joe Trow*, 119 IBLA 388, 392 (1991)), *aff'd*, *GEO-Energy Partners-1983 LTD. v. United States*, 551 F. Supp. 2d 1210 (D. Nev. 2008), *aff'd*, 613 F.3d 946 (9th Cir. 2010).

<sup>29</sup> *Dee Schmaus and Family*, 187 IBLA 136, 138 (2016); *Prairie County, Montana*, 186 IBLA 128, 130 (2015).

Specifically, we have held that a “decision” authorizes or prohibits some action that affects a person having or seeking some right, title, or interest in public lands or their resources.<sup>30</sup> As we have explained: “[W]e do not have general management authority over BLM. Departmental regulations limit our jurisdiction to considering decisions . . . [in] which [BLM] make[s] determinations regarding individual rights of a party and take[s] or prevent[s] specific action.”<sup>31</sup> Accordingly, in the absence of an agency decision, this Board does not have jurisdiction to review the challenged agency action.<sup>32</sup>

Although there is no particular form required for a decision, “[t]his Board’s appellate review authority cannot be invoked simply because someone may object to something BLM is doing. . . . [T]here must be an identifiable decision . . . .”<sup>33</sup> A document that is “merely informational and explanatory of actions already taken” is not a decision.<sup>34</sup> Were we to hold that such documents qualify as decisions, we could adversely affect the Department’s efforts to be responsive and transparent to the public:

To find [that informational documents are decisions] could in the future subject BLM and this Department to a potentially unending barrage of “appeals” by entities dissatisfied with prior BLM decisions who could fabricate appealable decisions merely by submitting information requests to BLM and filing an appeal whenever BLM responds. Not only is such a circumstance administratively unsustainable, it would discourage BLM from responding to such inquiries, resulting in a chilling effect on the Department’s commitment to government transparency and public access to information.<sup>[35]</sup>

[2] The 2016 Gather Plan is not a “decision” that is subject to the Board’s review. It is a document BLM prepared for its own internal use, which sets forth its

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<sup>30</sup> See *Prairie County, Montana*, 186 IBLA at 130; *Uranium Watch*, 182 IBLA 311, 314 (2012); *GEO-Energy Partners-1983 LTD.*, 170 IBLA at 119; *Defenders of Wildlife*, 144 IBLA 250, 255 (1998).

<sup>31</sup> *Defenders of Wildlife*, 169 IBLA 117, 127 (2006).

<sup>32</sup> *Prairie County, Montana*, 186 IBLA at 130 (citing *Southern Utah Wilderness Alliance*, 122 IBLA 17, 20 (1992)).

<sup>33</sup> *Uranium Watch*, 182 IBLA at 314-15 (quoting *Southern Utah Wilderness Alliance*, 122 IBLA at 20).

<sup>34</sup> *Id.* at 315 (quoting *Hacienda del Cerezo*, 135 IBLA 277, 280 (1996)).

<sup>35</sup> *Id.* (footnotes omitted).

plan for the most recent implementation phase of the 2011 Stone Cabin Complex Decision. BLM created the public 2016 Gather Plan document in response to a request from a grazing permittee and intended the document to be “merely informational and explanatory” of a decision already made.<sup>36</sup>

The administrative record reflects BLM’s understanding and intention that the 2016 gather was a continuation of the program authorized by the 2011 Stone Cabin Complex Decision. For example, BLM explained in its Internal Communications and Incident Plan for the 2016 gather that

[r]emovals of wild horses could be implemented through the life of the [2011 Stone Cabin Complex Decision] to achieve the management targets, to relieve resource concerns and/or remove concentrated groups of excess wild horses.

By implementing [] a phased approach utilizing multiple gathering methods, the BLM would be able to reduce the population growth rate over time, and continue to treat an increasing number of mares with fertility control through a collaborative approach.<sup>[37]</sup>

Because the 2016 Gather Plan implemented a previous decision, it does not itself authorize or prohibit any action, and we do not have jurisdiction to review it.

## 2. *The 2016 Gather Plan Is Not a New Decision Distinct From the 2011 Stone Cabin Complex Decision*

Appellants’ primary argument that they may appeal the 2016 Gather Plan is based on their view that the 2016 gather is in conflict with and “does not conform to the prescribed management plan in the 2011 [Stone Cabin Complex] Decision.”<sup>38</sup> Specifically, Appellants fault the 2016 gather for not reducing the wild horse population below the AML, which they contend the 2011 Stone Cabin Complex

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<sup>36</sup> *Id.* (quoting *Hacienda del Cerezo*, 135 IBLA at 280).

<sup>37</sup> Internal BLM Communications and Incident Action Plan at 6; *see also id.* at 4 (“The purpose of the gather is to remove excess wild horses and continue a Population Growth Suppression (PGS) program through application of the fertility control vaccine PZP-22, and subsequent boosters via remote darting.”), 6 (“The BLM would continue to implement fertility control through bait and water trapping, remote darting, and helicopter drive trapping.”); BLM Wild Horse Gather Plan (Public) at 3, 4, 5.

<sup>38</sup> NOA at 20.



Decision requires every time BLM conducts a gather in the HMA. Appellants argue that the 2016 Gather Plan therefore “prescribes a *different* management plan” because it would not result in achieving AML.<sup>39</sup> In effect, Appellants claim that because the 2016 gather does not comply with the 2011 Stone Cabin Complex Decision, it is therefore a new, separately appealable decision.

However, the fact that the population of wild horses in the Stone Cabin HMA eventually exceeded the AML after the initial gather in 2011 and that the 2016 gather did not return the population below the AML does not mean that the 2016 gather is in conflict with the 2011 Stone Cabin Complex Decision and therefore a different or new decision. Instead, the 2016 gather was a proper exercise of BLM’s authority to manage wild horses on public lands in furtherance of the 2011 Stone Cabin Complex Decision. The 2016 gather (and other future gathers) was specifically provided for and authorized by that decision.<sup>40</sup> BLM explains:

The fact that it may take another gather or gathers over the next five years to continue to reduce population growth while also using “limited removals” to achieve AML does not reflect a modification of the 2011 Decision, but is instead an exercise of BLM’s discretionary management authority when it implements a properly issued decision. There is nothing in the decision that conflicts with the phased approach BLM is using to implement “limited removals” in 2016 and in the next few years, in conjunction with fertility treatments, to bring the population back to, and manage for, AML.<sup>[41]</sup>

We agree with BLM that Appellants’ reading of the 2011 Stone Cabin Complex Decision is overly narrow; the decision does not, as Appellants argue, require that every gather subsequent to the initial 2012 gather “*immediately* bring the wild horse population back to AML.”<sup>42</sup> Furthermore, although BLM strives to maintain

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<sup>39</sup> *Id.*; see also *id.* at 23 (“The 2016 Gather Plan contradicts the management plan described in the 2011 BLM Decision and assessed in the 2011 Final EA. The 2011 BLM Decision stated unequivocally that AML for the Stone Cabin HMA would be set at 364 head.”).

<sup>40</sup> 2011 Stone Cabin Complex Decision at 2 (describing the approved action as “[c]ontinuing population growth control protocols over the next 10 years by returning to the Stone Cabin Complex every 2-3 years to treat and/or re-treat mares with fertility control and to maintain AML using limited removals”); EA at 14, 18.

<sup>41</sup> BLM Motion to Dismiss at 8.

<sup>42</sup> *Id.* at 7, 18-19.

AMLs,<sup>43</sup> the Wild Free-Roaming Horses and Burros Act does not equate the exceedance of an AML “with any requirement to remove excess animals from a particular HMA[] [n]or does the BLM itself define the [AML] as equivalent to a determination that removal is necessary.”<sup>44</sup> Instead, an “AML is a vehicle used to move towards a [thriving natural ecological balance], and a trigger by which [] the BLM is alerted to address population imbalance.”<sup>45</sup> In this case, BLM’s 2011 Stone Cabin Complex Decision recognized that it would be necessary to return to the Complex periodically over ten years to maintain the AML,<sup>46</sup> and the 2016 gather authorized by that decision properly implemented it even though the gather did not result in immediately reducing the population of wild horses below the AML in the Stone Cabin HMA. Moreover, how BLM allocates resources to implement a decision within the bounds of its budget, resources, and national priorities is committed to its discretion and not subject to our review.<sup>47</sup>

Appellants rely on *James D. Wilcox v. BLM*<sup>48</sup> in support of their argument for appealing the 2016 gather, stating that *Wilcox* stands for the proposition that when BLM deviates from the terms of a previously-issued decision, the proper time to appeal such a decision is at the time the new action is implemented and adversely affects the appellant.<sup>49</sup> But the circumstances in *Wilcox* are distinguishable from those in this case because in *Wilcox*, BLM imposed a new requirement. In *Wilcox*,

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<sup>43</sup> See, e.g., *In Defense of Animals v. U.S. Department of the Interior*, 909 F. Supp. 2d 1178, 1185 (E.D. Cal. 2012) (“The BLM strives to remove animals from the HMA, or take other remediation measures as necessary, when population numbers exceed the established AML.”); see also BLM Manual 4710, Management Considerations Relating to Wild Free-Roaming Horses and Burros at 4.43B (Rel. 4-112 July 7, 2010) (“Whenever possible, implement selective removal gathers and release animals back to the range in a manner designed to achieve AML . . .”).

<sup>44</sup> *Wyoming v. U.S. Department of the Interior*, 839 F.3d 938, 945 (10th Cir. 2016).

<sup>45</sup> *Defenders of Animals v. U.S. Department of the Interior*, 751 F.3d 1054, 1063-64 (9th Cir. 2014).

<sup>46</sup> 2011 Stone Cabin Complex Decision at 2; EA at 14, 17, 18.

<sup>47</sup> See *Colo. Wild Horse & Burro Coalition, Inc. v. Jewell*, 130 F. Supp. 3d 205, 213 (D.D.C. 2015) (the Wild Free-Roaming Horses and Burros Act authorizes BLM to determine both the AMLs and how they should be achieved); see also EA at 17 (BLM recognized that “[f]unding limitations and competing priorities may require delaying the follow-up gather and population control component of the [decision].”).

<sup>48</sup> 134 IBLA 57 (1995), modified on other grounds, *Yates Petroleum Corp.*, 136 IBLA 249 (1996).

<sup>49</sup> NOA at 12 n.8; Reply at 7.

BLM issued Wilcox a grazing permit outlining the authorized number of cattle and seasons of use.<sup>50</sup> The permit also stated that “eartagging or paint marking [of cattle] may be required due to fluctuating cattle numbers.”<sup>51</sup> Later the same year, BLM informed Wilcox that, in accordance with the stipulation in the grazing permit, Wilcox would be prohibited from grazing cattle that did not have BLM-issued ear tags.<sup>52</sup> The Board rejected BLM’s contention that Wilcox was bound by the eartagging condition in his grazing permit: “That condition simply notified Wilcox of the possibility that ear-tagging ‘may’ be required, not that ear-tagging definitely ‘will’ be required.”<sup>53</sup> Furthermore, until eartagging was actually required, the Board held that Wilcox was not obligated to challenge the requirement: “The proper time to contest such a permit provision occurs when the condition is actually activated.”<sup>54</sup>

While Appellants argue that *Wilcox* dictates that they acted properly in appealing now, when BLM implemented the 2016 Gather Plan, we disagree. Here, and in contrast to the potential eartagging requirement in *Wilcox*, in the 2011 Stone Cabin Complex Decision, BLM specifically provided for and authorized future wild horse gathers, in addition to the initial 2011 gather, to fully implement the decision.<sup>55</sup> BLM did not merely notify the public of the possibility of future gathers; it authorized and stated its intention to conduct them. In conformance with that decision, in the 2016 Gather Plan, BLM documents its intent to complete actions specifically contemplated by the 2011 Stone Cabin Complex Decision: the gather, limited removal, and fertility treatment of wild horses in the Stone Cabin HMA. The 2011 Stone Cabin Complex Decision expressly authorized multiple gathers, removals, and fertility treatment over a 10-year period, with the goal to reach and maintain AML.<sup>56</sup> Appellants cannot now appeal an action specifically authorized by and implementing a previously approved decision.

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<sup>50</sup> 134 IBLA at 58.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 71.

<sup>54</sup> *Id.*

<sup>55</sup> 2011 Stone Cabin Complex Decision at 2; EA at 14, 18.

<sup>56</sup> See 2011 Stone Cabin Complex Decision at 2-3 (authorizing continuing population growth control protocols, limited removals, and water/bait trapping to capture additional wild horses instead of gathering by helicopter where trapping “most feasible to achieve and maintain AML.”).

## CONCLUSION

BLM's 2011 Stone Cabin Complex Decision authorized periodic gathers and fertility treatments over the following ten years to maintain the wild horse population at the AML.<sup>57</sup> The 2016 Gather Plan documented the continuing implementation of that decision and was not itself a separate, appealable decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,<sup>58</sup> we grant BLM's Motion to Dismiss for lack of jurisdiction, deny Appellants' stay petition as moot, and dismiss Appellants' appeal.

\_\_\_\_\_/s/  
Silvia M. Riechel  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
Amy B. Sosin  
Administrative Judge

<sup>57</sup> *Id.* at 2; EA at 14, 17, 18.

<sup>58</sup> 43 C.F.R. § 4.1.